

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GROSSMONT UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015020647

DECISION

Grossmont Union High School District filed a due process hearing complaint with the Office of Administrative Hearings, State of California, on February 11, 2015, naming Student.

Administrative Law Judge Judith L. Pasewark heard this matter in El Cajon, California, on March 11, 2015.

Sarah Sutherland, Attorney at Law, represented District. Rose Tagnessi, Director of Special Education for District attended the hearing.

Parent (Mother) did not attend the hearing. The hearing was scheduled for 9:30 a.m. Prior to the commencement of the hearing, the ALJ called Mother at the telephone number provided to OAH. On the first call, Mother answered, and the ALJ asked if she was going to attend the hearing. Mother stated she was driving and could not talk at that time. The ALJ stated she would call back in a few minutes. At 9:50 a.m., the ALJ called Mother's number again, this time receiving no answer, only voicemail. The ALJ left a message that the hearing would begin at 10:00 a.m., and Mother was requested to contact District if she was delayed. Mother did not appear or contact District.¹ The hearing commenced at 10:00 a.m. without Mother.²

¹ The Prehearing Conference Order notes that Mother did not participate in the Prehearing Conference or submit any required prehearing documents. On March 5, 2015, Mother contacted OAH to indicate she had a scheduling conflict for the hearing date. Mother was advised of the Prehearing Conference date and further instructed to provide OAH with documentation of the conflict, to request a continuance of the hearing. Mother did not comply with this request, therefore the

ISSUE AND REMEDY SOUGHT

The sole issue in this matter is whether District may assess Student pursuant to its assessment plan(s) which were offered to Parent on October 30, 2014, November 17, 2014, December 17, 2014, and January 10, 2015, without parental consent.

District seeks an order to allow assessment of Student without parental consent, so it may determine whether Student requires additional special education and related services.

SUMMARY OF DECISION

District presented a prima facie case that established that additional assessments of Student were and still remain necessary for District to appropriately determine Student's special education and services needs. No evidence was presented to the contrary; therefore, District shall be allowed to assess Student pursuant to the 2014-2015 Assessment Plans, without parental consent.

FACTUAL FINDINGS

1. Student is a 14 year old student, who is eligible for special education and related services under the primary eligibility category of Emotional Disturbance, and a secondary eligibility category of Other Health Impairment due to attention deficit hyperactivity disorder. His last triennial assessment was conducted by his prior elementary school district in April 2012.

2. Jamie Tate-Symons is District's assistant director of special education and has personal knowledge and involvement with Student since his enrollment in District. Student enrolled in District as a ninth grader at the beginning of the 2014-2015 school year, and attended Steele Canyon Charter High School (Steele Canyon). Steele Canyon focuses on full inclusion of special education students with their general education peers. It is a comprehensive high school campus with approximately 2,400 students.

3. On September 2, 2014, District held Student's interim individualized education plan meeting following his enrollment in District. District noted Student

date for due process hearing remained as previously scheduled. Mother was legally served with a copy of the Prehearing Conference Order, which notified her of the March 11, 2015 hearing date, time and location.

² Due to an initial recording problem, the hearing actually commenced at 11:00 a.m. Mother still did not appear.

had come from a smaller middle school setting, with placement in a smaller, behavior related special day classroom. The IEP team recommended similar placement within District. Mother did not consent and requested full inclusion at Steele Canyon. Further, Mother did not consent to continuing Student's counseling services.³ District acceded to Mother's requests.

4. The requested placement did not go well. On October 21, 2014, Student was caught smoking marijuana at school, while engaging in a sexual act with a non-student, which was photographed and posted on social media. A manifestation determination review and IEP was held on October 30, 2014. The incident was determined to be a manifestation of Student's emotional disturbance. Student was suspended for five days, and referred to District's PATH Program for his suspension time.⁴ Mother consented to the recommendations made in the manifestation determination review meeting.

5. In response to Student's suspension, the IEP team discussed the need to assess Student. On October 30, 2014, District provided Mother with an assessment plan for a functional behavior assessment to be administered by a District behavior specialist. Additionally, District provided Mother with an assessment plan for an Educationally Related Mental Health Services assessment to be administered by a school psychologist or mental health professional.

6. Further, Student had not been assessed since middle school, April 2012, and his behaviors were negatively affecting his academic performance. Therefore, also on October 30, 2014, District provided Mother with an assessment plan to assess Student in the areas of academic achievement, health, intellectual development, social/emotional, adaptive behavior, and behavior. District proposed the assessments be conducted by appropriate District staff.

7. Mother received all of the above assessment plans at the IEP meeting on October 30, 2014, but did not consent to any of the assessments. Instead, she indicated she needed to think about them. Subsequently, she has not provided consent to any assessment.

8. Student continued to accumulate behavioral citations at school. On November 3, 2014, Student was cited for perpetual tardiness to class, as well as

³ Student's prior disciplinary records, reporting some 26 pages of offences, documented Student defiant and disruptive behaviors that resulted in referrals, detentions, and suspensions prior to entering District.

⁴ The PATH Program is designed for class work and counseling during suspension. Student was scheduled attend four hours of independent study for five days. Student attended only one of the five days during his suspension.

possession of a cell phone in class, and verbal defiance to District staff. On November 13, 2014, Student threatened and intimidated another student who was attempting to break up a fight. Student was suspended for three days and warned that another referral for violation of the school disciplinary code could result in a recommendation for expulsion.

9. Based upon the early November 2014 incidents, another manifestation determination review and IEP meeting was held on November 17, 2014. Again, Student's actions were deemed a manifestation of his emotional disturbance. District concluded that Student needed more services and counseling. Mother refused additional services. The IEP team again provided Mother with copies of the requested assessment plans. Mother did not consent to the assessments.

10. Student returned to school on November 19, 2014, and on November 20, 2014, Student was given "Saturday School" detention for his additional tardiness and disruptive behaviors. On November 21, 2014, Student was caught under the influence of marijuana while he was jumping over a fence to get into a football game.

11. On December 5, 2014, District held another manifestation determination review and IEP meeting. District determined that the expellable offense of being under the influence of a controlled substance at a school event was not a manifestation of Student's disability. As a result, the IEP team determined Student would be placed in an interim alternative educational setting for 45 days due to his drug offense. Student was placed at Chaparral High School (Chaparral), while District sought Student's expulsion. Mother did not agree with the manifestation determination or Student's placement at Chaparral.

12. The IEP team also discussed its continuing desire to assess Student as initially requested on October 30, 2014. Mother indicated she did not have the assessment plans with her and she needed to check on some items. No consent was provided at this meeting.

13. On December 9, 2014, District filed a Request for Mediation Only with OAH, attempting to obtain Mother's consent to the assessments. Mother declined to participate and the case was therefore dismissed.

14. On December 17, 2014, Ms. Tate-Symons formally wrote Mother to recap the manifestation determination review, expulsion procedure, and the need to enroll Student in the interim educational setting at Chaparral. This letter also reiterated District's position regarding Student's assessments as follows:

The District has also proposed to assess [Student] in the areas of Psycho-Education as well as Educationally Related Mental Health Services, in response to your requests and concerns about Student's

progress and behavior. The desire to assess was provided verbally during the meetings as well as through the presentation of assessment plans on October, 30, 2014, and November 19, 2014. Student's triennial assessment is due on February 26, 2015, and your lack of consent is jeopardizing the District's ability to offer and provide Student with a free, appropriate public education. It is also compromising the District's ability to comply with legal timelines for completing triennial evaluations.... Please know that the District still is requesting consent to assess Student as mentioned above.....

Duplicates of the assessment plans were enclosed with the letter along with a copy of Procedural Safeguards and were mailed to Mother via certified mail.

15. Student was incarcerated sometime in December 2014, and was not enrolled at Chaparral until January 10, 2015. While enrolling Student, Mother was given Student's Triennial Assessment Plan, which requested assessments in the areas of Academic Achievement, Health, Intellectual Development, Social/Emotional, Adaptive Behavior, Post-secondary Transition, Functional Behavior Analysis and Educational Related Mental Health Service assessment. The Assessment Plan designated appropriate examiners for each assessment. Mother has still not consented to the assessments.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)⁶ The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁶ All citations to Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

2. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents to expansion of the issues. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

3. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and which conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, to make progress in the general education curriculum, and to participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

District's Request to Reassess Student

4. A district must ensure that a child is assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code § 56320, subd. (f).) The assessment must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6).)

5. A school district must conduct a reassessment if it "determines that the educational or related service needs of the child, including improved academic achievement and functional performance, of the child warrant a reevaluation," or if the student's parents or teacher request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); see also Ed. Code, § 56381, subd. (a)(1).)

6. A reassessment shall occur not more frequently than once a year, unless the parent and the district agree otherwise, and shall occur at least once every three years, unless the parent and the district agree, in writing, that a reassessment is unnecessary. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).)

7. A school district must obtain informed parental consent, prior to conducting any reevaluation of a child with a disability. If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override procedures. (34 C.F.R. § 300.300 (c)(i)(ii).)

8. Informed parental consent need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the child's parent has failed to respond. (34 C.F.R. § 300.300 (c)(2)(i)(ii).) To meet the reasonable efforts requirement, the school district must document its attempts to obtain parental consent. (34 C.F.R. § 300.300 (d)(5).)

9. District has appropriately requested parental consent to reassess Student. Mother has been advised of the need to reassess Student at each of Student's IEP meetings this school year. District has provided Mother with appropriate assessment plans on October 30, 2014, November 17, 2014, December 17, 2014, and January 10, 2015. District filed a Mediation Only Request with OAH to seek Mother's consent to reassess. Mother declined to attend the scheduled mediation session.

10. District has several crucial reasons for seeking reassessment of Student. Specifically, (1) Student is new to District, and District has not yet assessed Student; (2) Student's outrageous behaviors, disciplinary actions, and multiple suspension clearly indicate a need for reevaluation; and Student's triennial IEP, due in February 2015, cannot be completed without statutorily mandated reassessment. District established its need to conduct a comprehensive triennial assessment based on Student's escalating behaviors that has led to disciplinary conduct.

11. District has met its burden of proof, and shall be allowed to reassess Student without parental consent, pursuant to the assessment plans provided to Mother on October 30, 2014, November 17, December 17, 2014, and January 10, 2015.

ORDER

1. District's request to reassess Student without parental consent, pursuant to the assessment plans provided to Mother on October 30, 2014, November 17, December 17, 2014, and January 10, 2015, is granted. District may reassess Student without parental consent.

2. If Student's Parent wishes to have Student considered for special education services by District, Student's Parent must make Student available for assessment by the District, in accordance with the assessment plan.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District was the prevailing party on the sole issue presented.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: March 26, 2015

/s/
JUDITH L. PASEWARK
Administrative Law Judge
Office of Administrative Hearings